

Emperor Vs. Keshav Govind

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Court : Mumbai

Decided On : Jan-26-1921

Reported in : (1921)23BOMLR350

Judge : Norman Macleod, Kt., C.J. and ;Shah, J.

Appeal No. : Criminal Reference No. 95 of 1920

Appellant : Emperor

Respondent : Keshav Govind

Judgement :

Norman Macleod, Kt., C.J.

1. Certain questions of law which arose in a case before the Chief Presidency Magistrate in the case of Imperator v. Keahav Govind and thirty-three others, have been referred for the opinion of the High Court under Section 432, Criminal Procedure Code. On the evidence the Magistrate found that the accused were members of an unlawful assembly.

2. The question was whether they had been commanded in the manner prescribed by law to disperse, and it is admitted that the crowd was commanded to disperse by Mr. Oliveira, the Presidency Magistrate.

3. Under Section 127, Criminal Procedure Code, any Magistrate or Officer in charge of a Police Station may command any unlawful assembly to disperse. But the whole of Chapter IX of the Criminal Procedure Code, in which Section 127 appears, was repealed by the Bombay City Police Act IV of 1902, and Sections 127 and 128, Criminal Procedure Code, were replaced by Section 40 of that Act. Section 40, Sub-section (1), makes no mention of a Magistrate. The only person who may command an unlawful assembly to disperse is an officer in charge of a section; and under Section 55 a Police Officer of superior rank, if on the scene, might perform the, duty of the Officer in charge of a section. In this case it appears the Police Commissioner was on the scene. Instead of giving the command to disperse himself, he asked the Magistrate to give the command. If the section gives no power to the Magistrate to command an unlawful assembly to disperse, since it is only when a member of an unlawful assembly has been commanded in the manner prescribed by law to disperse that he could be found guilty under Section 145, Indian Penal Code, it seems clear that a member of an unlawful assembly who has been commanded by a Magistrate to disperse cannot be convicted under that section; nor does the language of Section 151, Indian Penal Code, make any difference, although the word 'lawfully' is used instead of 'in the manner prescribed by law.' The explanation shows that it was not intended that the difference in phraseology in the two sections should make any difference in the proper construction of them. I think, therefore, that the construction placed by the learned Chief Presidency Magistrate on Section 40 of the Bombay City Police Act is correct. Questions 1 and 3 should be answered in the affirmative and questions 2 and 4 in the negative. We think there was not much necessity to refer these questions to the High Court, as it would have been open to the Magistrate to send the papers to Government with his decision for it is really a matter for the Legislature to decide Whether Section 40 of the Bombay City Police Act should be amended so as to bring it into line with Sections 127 and 128 of the Criminal Procedure Code, all that the Court can do is to lay down what the law is, not what it ought to be.

Shah, J.

4. I agree.

